

# Cartel leniency in Turkey: overview

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A Q&A guide to cartel leniency law in Turkey.

The Q&A is part of the global guide to cartel leniency. Areas covered include an overview of leniency and immunity, the applicable procedure, relevant regulatory authorities, and conditions to be satisfied. Also covered are immunity from civil fines to individuals, the scope of leniency, circumstances when leniency may be withdrawn, leniency plus, confidentiality and disclosure, whistleblower tools and protections, and proposals for reform.

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## Regulation

1. What laws provide for a leniency programme and which regulatory authority administers it? Is there any published guidance?

## Applicable laws and guidance

The statutory basis for competition law in Turkey is the Law on Protection of Competition No. 4054 (Competition Law). The secondary legislation specifying the details of the leniency mechanism is the Regulation on Active Cooperation for Discovery of Cartels (Leniency Regulation) of 15 February 2009 and the Guidelines on Clarification of Regulation on Leniency (Leniency Guidelines) of 17 April 2013. The Leniency Guidelines were prepared to:

- Provide certainty in interpretations.
- Reduce uncertainty in practice.
- As a requirement under the transparency principle, provide guidance to undertakings and enable them to benefit from the leniency programme more efficiently.

## Regulatory authority

The national competition authority for enforcing the Competition Law is the Competition Authority, a legal entity with administrative and economic independence.

The Competition Authority consists of the:

- Competition Board. In its capacity as the competent body of the Competition Authority, the Competition Board is responsible for, among other things, reviewing and resolving cartel cases and leniency applications. The Competition Board consists of seven members and is seated in Ankara.
- Presidency.
- Main Service Units, which comprise the following:
  - six supervision and enforcement departments;
  - department of decisions;
  - economic analyses and research department;
  - information technologies department;
  - external relations and competition advocacy department;
  - human resources department;
  - administrative services department;
  - strategy development department; and
  - cartel and on-site inspections support division (Leniency Division).

Each of the six supervision and enforcement departments has a sectoral job definition.

## Scope of application

2. What infringements of competition law does the leniency programme cover?

Under the Leniency Regulation, the leniency programme is only available for cartelists. It does not apply to other forms of anti-trust infringement. Section 3 of the Leniency Regulation provides a definition of cartel, which encompasses price fixing, customer/supplier/market sharing, restricting output or placing quotas, and bid-rigging.

The Turkish cartel regime is, in principle, administrative and civil in nature (not criminal). Cartel conduct will not result in imprisonment of the individuals involved. However, there have been cases where the matter was referred to a public prosecutor before or after the competition law investigation was complete. For example, bid-rigging can be prosecuted criminally under section 235 *et seq.* of the Criminal Code. Additionally, illegal price manipulation (that is, manipulation through disinformation or other fraudulent means) can be punished by up to two years' imprisonment and a judicial monetary fine under section 237 of the Criminal Code.

## Recent cases and trends

### 3. What notable recent cases have applied the leniency programme?

Several leniency applications were submitted before the Competition Board after the entry into force of the Leniency Regulation.

As leniency applications are confidential, the examples below are limited to certain non-confidential applications:

- Arçelik/Vestel (2 January 2020, 20-01/13-5).** In one of the most recent decisions relating to leniency applications, Arçelik Pazarlama AŞ (Arçelik) submitted a set of documents attesting to an employee's exchange of commercially and competitively sensitive information with its competitor Vestel Ticaret AŞ (Vestel), under a leniency application. The Competition Board concluded that the conduct being examined did not constitute a violation of Article 4 of the Competition Law because the Arçelik employee was leaking the information to the competitor without Arçelik's knowledge or consent and Arçelik was not aware of the information exchange. The Competition Board found that Arçelik was not in a position to make strategic calls based on the information conveyed to Vestel. Consequently, the Competition Board unanimously decided not to impose administrative fines.

However, the Competition Authority case handlers were of the opinion that Arçelik and Vestel had violated Article 4 of the Competition Law by exchanging competitively sensitive information, and that Arçelik should be granted full immunity under Article 16/6 of the Competition Law (which provides that, subject to the discretion of the Competition Board, undertakings that actively co-operate with the investigation should not be subject to penalties). This is noteworthy because the case-handlers suggested granting full immunity to Arçelik even though the infringement itself was not characterised as a cartel under the Competition Law (therefore disregarding the working of the Leniency Regulation).

- Ambarlı Ro-Ro (18 April 2019, 9-16/229-101).** In this case, the Competition Board initiated an investigation against undertakings active in the Ambarlı-Bandırma and Ambarlı-Topçular Ro-Ro transportation lines (namely, Tramola Gemi İşletmeciliği ve Ticaret AŞ (Tramola), Kale Nakliyat Seyahat ve Turizm AŞ (Kale), İstanbullines Denizcilik Yatırım AŞ (İstanbullines), Kabotaj Hattı Ro-Ro ve Feribot İşletmecileri Derneği (Association), İstanbul Deniz Nakliyat Gıda İnşaat Sanayi Ticaret Şti (İDN) and İstanbul Deniz Otobüsleri Sanayi ve Ticaret AŞ (İDO)). The Competition Board found that Tramola, Kale Nakliyat and İstanbullines (operating in the Ambarlı-Bandırma Ro-Ro line) and İDN and İDO (both active in the Ambarlı-Topçular Ro-Ro line) violated Article 4 of the Competition Law due to them collectively determining prices. The Competition Board imposed administrative fines on the undertakings, ranging from 0.8% to 4% of their annual turnover.

However, the administrative fine imposed on Kale was reduced by 50%, as Kale sought a leniency application by submitting an investigation notice. However, Kale did not benefit from full immunity and had to settle for merely a reduction to its fine, as its leniency application was not made prior to the initiation of the preliminary investigation and the Competition Board already possessed evidence of cartel infringement at the time of the application. It is important to note, however, that the evidence submitted by Kale in its leniency application led the Competition Board to conclude that the duration of the violation was for longer

than anticipated in light of the evidence collected by the Competition Board prior to the leniency application. As a result, while the Competition Board therefore extended the duration of the violation to match to full (previously unknown) period of the cartel for the other investigated parties, the evidence presented in the leniency application was not taken into consideration when determining the duration for Kale's violation.

- **Corporate loans decision (28 November 2017, 17-39/636-276).** In this case, the Competition Board launched an investigation into 13 financial institutions (including local and international banks active in the corporate and commercial banking markets in Turkey) in relation to whether they had violated Article 4 of the Competition Law by exchanging competitively sensitive information on loan conditions (such as interest and maturity) regarding current loan agreements and other financial transactions. The Bank of Tokyo-Mitsubishi UFJ Turkey AŞ (BTMU) made a leniency application on 14 October 2015 to benefit from Article 4 of the Leniency Regulation. After 19 months of thorough investigation, the Competition Board unanimously concluded that BTMU, ING Bank AŞ (ING) and the Royal Bank of Scotland Plc Merkezi İstanbul Merkez Şubesi (RBS) had violated Article 4. The Competition Board imposed administrative monetary fines of TRY21.1 million and TRY66,400 on ING and RBS, in relation to their annual turnover for 2016.

Although the Competition Board decided that the violation should be characterised as an anti-competitive information exchange rather than a cartel, BTMU was granted full immunity from fines. In this case, however, the Competition Board grounded its decision on its authority to grant full immunity under the Article 16/6 of the Competition Law and did not apply the Leniency Regulation. RBS and ING were subject to fines, whereas the remaining eight investigated undertakings were not found to be violating the Competition Law.

This decision should not, however, be interpreted such that leniency applicants can always benefit from full immunity even when the relevant violation does not constitute a cartel. In fact, in *Hyundai Dealers (16 December 2013, 13-70/952-403)* the Competition Board clearly provided that the leniency applicant would not benefit from the Leniency Regulation, as the infringement in question was characterised as an anti-competitive information exchange and not a cartel.

- **Mechanical Engineering (14 December 2017, 17-41/640-279).** In this case, the Competition Board initiated an investigation against 16 freelance mechanical engineers to determine whether they violated Article 4 of the Competition Law by forming a profit-sharing cartel. One of the investigated undertakings applied for leniency during the course of the preliminary examination. The Competition Board concluded that the freelance mechanical engineers were parties to a cartel arrangement but the leniency applicant received full immunity from fines.
- **Balkan Train and Soptrain co-operation (16 December 2015, 15-44/740-267).** Following a leniency application, the Competition Board initiated an investigation in early 2014 concerning several undertakings, including the Deutsche Bahn group of companies, operating in the market for rail freight forwarding services on allegations of an Article 4 violation through customer allocations agreements within the framework of Balkan Train and Soptrain co-operation. At the end of the long in-depth investigation, the Competition Board concluded that the customer protection agreements had not produced effects on the Turkish markets within the meaning of Article 2 of the Competition Law and therefore, the allegations in question did not fall within the scope of the Competition Law.
- **Yeast (22 November 2014, 14-42/738-346).** In this case, the Competition Board launched an investigation against four fresh yeast producers to determine whether they violated Article 4 of the Competition Law by fixing the prices of fresh bread yeast. The Competition Board held that the defendants violated Article 4 and imposed a total fine of about TRY14 million (about EUR5 million) on three yeast producers. The fines range between 1.8% and 2.7% of their annual turnover. Mauri Maya San AŞ received full immunity as a result of its leniency application. The leniency application was submitted after dawn raids.

Mauri Maya could otherwise have received a monetary fine of 4.5% of its annual turnover. Through this decision, the Competition Board implicitly invited more leniency applications, even for cases where a pre-investigation has already been initiated.

## Availability of leniency

### Administrative liability

4. Is full immunity from administrative penalties available? What conditions must be met for immunity to be granted?

### Application for leniency

A cartelist can apply for leniency until the investigation report is officially served. Depending on the application order, there may be full immunity from, or reduction of, a fine. This immunity or reduction includes both offending companies and their employees/managers, with the exception of the "ring-leader", which can only benefit from a second degree reduction of fine.

#### First applicant

The first applicant undertaking to file a complete application for leniency before the opening of a preliminary investigation may benefit from full immunity. If the leniency application is made after the initiation of the preliminary investigation up until the "investigation report" is officially served, the applicant can only benefit from full immunity provided the Competition Authority has no evidence on the cartel infringement at the time when the application is made. Employees/managers of the first applicant will also be fully immune. However, for there to be full immunity, the applicant must not be the "ring-leader". If that is the case (for example, where the applicant has forced the other cartelists to participate in the cartel), there will be a reduction of fine between 33% and 50% for the undertaking and between 33% and 100% for the employees/managers.

#### Second applicant

The second applicant to file a correctly prepared application will receive a 33% to 50% reduction of the fine. Employees/managers of the second applicant who actively co-operate with the Competition Authority will benefit from a reduction of 33% to 100%.

#### Third applicant

The third applicant will receive a 25% to 33% reduction. Employees/managers of the third applicant who actively co-operate with the Competition Authority will benefit from a reduction of 25% to 100%.

## Subsequent applicant

Subsequent applicants will receive a 16% to 25% reduction. Employees/managers of subsequent applicants will benefit from a reduction of 16% to 100%.

## Conditions for immunity

The conditions for benefiting from the immunity/reduction are as follows:

- The applicant must submit:
  - information on the products affected by the cartel;
  - information on the duration of the cartel;
  - names of the cartelists;
  - dates, locations, and participants of the cartel meetings; and
  - other information or documents about the cartel activity.
- The required information can be submitted verbally.
- The applicant must avoid concealing/destroying the information/documents on the cartel activity.
- Unless the Leniency Division decides otherwise, the applicant must stop taking part in the cartel.
- Unless the Leniency Division instructs otherwise, the application must be kept confidential until the investigation report has been served.
- The applicant must continue to actively co-operate with the Competition Authority until the final decision on the case has been rendered.

5. Is there a sliding scale of available leniency from administrative penalties?

See [Question 4](#).

6. Is immunity or leniency for administrative penalties available to individuals? If so, what conditions apply?

Immunity or leniency is available to managers and employees. There are as yet no precedents about the status of former employees (see [Question 4](#)). Individuals who carry out an economic activity and act as an undertaking within the meaning of competition laws can also benefit from the leniency programme, if they take part in a cartel.

The Competition Board may not grant any reduction in fines to the applicant in cases where one or more of its employees refuse to co-operate. In its decision, the Competition Board considers the number of executives/employees who do not co-operate with the Competition Authority, their positions within the undertaking and any effort given by the undertaking to enable these persons' co-operation. In practice, therefore, it is in the Competition Board's discretion to decide whether or not it will apply a reduction.

7. Is immunity or leniency available for companies and/or its employees in relation to criminal prosecution? What are the implications for employees when an undertaking has been granted immunity or leniency?

## Circumstances

While the Turkish cartel regime is administrative and civil in nature, certain anti-trust violations, such as bid-rigging in public tenders, may also trigger criminal consequences. Immunity or leniency does not close the door on initiating criminal procedures on the basis of a Competition Board decision.

## Proceedings against employees

Cartel conduct will not result in imprisonment against the individuals implicated unless the investigated act amounts to a criminally-prosecutable conduct, such as bid-rigging in public tenders or illegal price manipulation. There have been cases where the matter had to be referred to a public prosecutor before or after the relevant competition law investigation was completed. Employees/managers of an offending company may face criminal liability, even in cases where the company benefits from immunity or leniency.

## Employees' interests

The current employees of a cartel member also benefit from the same level of leniency or immunity that is granted to the entity (see [Question 6](#)).

## Application proceedings

8. When should an application for leniency be made?

To benefit from immunity or a reduction in administrative fines, the applicant must make its leniency application before the investigation report is officially served. The applicant may benefit from full immunity if the application is made either:

- Before the opening of a preliminary investigation.
- After the preliminary investigation has been initiated (but before the investigation report is officially served) if the Competition Board has no evidence proving the existence of a cartel violation.

9. What are the procedural rules for leniency applications?

### **Relevant authority**

Leniency applications must be made to the Competition Authority.

### **Applicant**

The application can be made by the company, a representative on behalf of the relevant company, employees and managers of the company or by an individual employee or manager personally.

### **Informal/confidential guidance**

Under the Leniency Regulation, anyone wanting to benefit from the leniency programme can obtain information on a confidential basis, on whether the applicant would receive full immunity or fine reduction. However, the prospective applicant must provide enough information for the Competition Authority to evaluate whether the applicant will qualify. The amount of information required will be determined on a case-by-case basis.

### **Form of application**

Applications can be made in person, via e-mail, fax or phone, orally or in writing.

### **Markers**



The Competition Authority can grant a grace period to applicants to submit the necessary information and evidence under the Leniency Regulation to complete their applications. For the applicant to be eligible for a grace period, it must provide minimum information concerning the:

- Affected products.
- Duration of the cartel.
- Names of the parties.

## Information/evidence

See [Question 4](#).

## Oral statements

There is no legal obstacle against conducting a leniency marker application orally. The Leniency Regulation provides that information required for making a leniency application (see [Question 4](#)) can be submitted verbally. In such a case, the submitted information should be put into writing by the administrative staff of the Competition Authority and confirmed by the relevant applicant or its representatives.

## Short-form applications

Not applicable.

10. What are the applicable procedures and timetable?

The Leniency Regulation and the Leniency Guidelines do not refer to any timetable for the Competition Board's decision on the leniency application. The Competition Board should decide on the leniency application before the investigation is completed.

## Withdrawal of leniency

11. In what circumstances and at what stage of the proceedings can leniency be withdrawn? What implications does the withdrawal of leniency from one company have for other applicants?

Although the relevant legislation does not explicitly set out rules, leniency applications can be withdrawn. However, the Competition Authority can continue the investigation *ex officio* after the withdrawal.

## Scope of protection

12. What is the scope of leniency protection after it has been granted?

In principle, leniency protection is limited to the specific investigation it is part of. If the Competition Authority discovers further evidence of the investigated act, this does not deprive the applicant of the benefits of the leniency protection, to the extent the applicant continuously complies with the Leniency Regulation.

The leniency protection in a specific investigation does not spill over to other violations investigated in other proceedings.

13. Does the competition authority offer any further reduction in fines for an undertaking's activities in one market if it is the first to disclose restrictive agreements and practices in another market (leniency plus)?

An applicant that does not qualify for full immunity under an ongoing investigation can receive a one fourth reduction in the ongoing investigation on top of the reduction it is already entitled to, if it provides the information/documents sought by the Leniency Regulation concerning another cartel.

14. Does the grant of leniency affect a third party's ability to bring a follow-on damages action against a leniency applicant?

Immunity or leniency does not have a binding effect on the courts, so third parties that are aggrieved by the violation can initiate follow-on damages actions against offending parties before civil courts despite the existence of an immunity or leniency.

Under Article 57 of Competition Law, real or legal persons who/which suffer losses due to distortion of competition can claim compensation for the loss from the parties causing the loss. The damages amount is the difference between the cost the injured parties paid and the cost they would have paid if competition had not been limited (*Article*

58/1, *Competition Law*). Further, Article 58(1) of the Competition Law stipulates that the competitors who were not involved in the competition law violation and suffered due to the violation can claim compensation for both actual damages and loss of profit.

Further, for damages exceeding the amount of the claimant's loss, the most distinctive feature of the Turkish competition law regime is the rule of triple damages (also known as "treble damages"). For the treble damages rule to apply:

- The damage must be the result of an agreement or decision of the parties, or an act of gross negligence by them.
- Only the material damages (and not moral damages) are relevant.
- The damage must be actual damages

(*Article 58/2, Competition Law.*)

However, the enforcement method of Article 58(2) is controversial in practice. It has been argued that the judge can only order treble compensation if the conditions are fulfilled, thus preventing a different multiplier being used. However, the prevailing legal opinion and the practice of local courts conclude that the judge has discretion to order "up to" treble compensation and thus can use any multiplier up three times the standard amount of compensation.

For example, decisions of courts of first instance where the relevant court followed the opinion that only treble compensation can be ordered or followed the opinion that the court has discretion to order "up to" treble compensation are provided below:

- One-fold compensation (*Istanbul 12th Consumer Court, 06 June 2017, 2016/82 E., 2017/220 K*).
- Two-fold compensation (*Istanbul Anatolian 4th Commercial Court of First Instance, 12 December 2017, 2015/1008 E. 2017/1325 K*).
- Three-fold compensation (*Marmaris 1st Civil Court of First Instance in the capacity of Consumer Court, 14 November 2017, 2017/17 E., 2017/494 K*).

Most of the civil courts wait for the decision of the Competition Board before making their own decision on the Competition Board's decision (*see 11th Civil Chamber of the Court of Appeals, October 5, 2009, 2008/5575 E., 2009/10045 K*). Since the courts usually wait for the Competition Board to render its decision, the court decision can be obtained more quickly in follow-on actions.

## Confidentiality and disclosure

15. What are the rules relating to confidentiality during a leniency application?

## Identity disclosure

Under the principles set out in the Leniency Regulation, the applicant (the undertaking or employees/managers of the undertaking) must keep the application confidential until the investigation report is officially served, unless it is otherwise requested by the authorised unit.

Articles 6 and 9 of the Leniency Regulation provide that unless otherwise stated by the authorised division, the principle is to keep leniency applications confidential until the service of the investigation report. However, to the extent the confidentiality of the investigation will not be harmed, the applicant undertakings can provide information to other competition authorities or institutions, organisations and auditors. Under paragraph 44 of the Leniency Guidelines, if the employees or personnel of the applicant undertaking disclose the leniency application to the other undertakings and breach the confidentiality principle, the Competition Board will evaluate the situation on a case-by-case basis, based on the criteria of whether the person at issue is a high-level manager, or whether the Competition Board was notified promptly enough after the breach.

Applicants can request anonymity until the legal service of the investigation report.

## Information disclosure

See above, *Identity disclosure*.

## Confidentiality requests

Leniency applicants can request anonymity until the investigation report is officially served. Leniency applicants can also request confidentiality of trade secrets for up to five years within the scope of Communiqué No. 2010/3 on the Regulation of Right to Access to File and Protection of Commercial Secrets.

16. What are the rules concerning disclosure of statements made in support of a leniency application?

## Domestic submissions and domestic discovery

The Turkish courts can subpoena documents/information from all public or private authorities and bodies, including the Competition Authority. The Competition Authority is constitutionally required to submit all information/documents requested by a Turkish court. Information/documents submitted as part of a leniency application can be subject to discovery orders in the Turkish courts, which can consider them if and to the extent they amount to legitimate evidence. Failure to provide the information/documents requested by the court may trigger criminal consequences on the part of the relevant Competition Authority official(s).

## Domestic submissions and foreign discovery

Turkey is a party to the HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970 (Hague Evidence Convention), together with bilateral treaties with many other countries on similar matters. Subject to the terms and conditions of the applicable conventions and treaties, the competent authorities (Turkish courts

and/or the Competition Authority) may be required to provide information/documents, if the court in a foreign jurisdiction sought judicial assistance under the applicable convention/treaty.

## Foreign submissions and domestic discovery

Subject to the terms and conditions of the applicable conventions and treaties, a Turkish court can seek judicial assistance to request information and/or documents from the competent authority in a foreign jurisdiction.

## Inter-agency co-operation

17. Does the regulatory authority in your jurisdiction co-operate with regulatory authorities from other jurisdictions in relation to leniency? If so, what is the legal basis for and extent of co-operation?

Article 43 of Decision No. 1/95 of the EC–Turkey Association Council (*Decision No. 1/95*) authorises the Turkish Competition Authority to notify and request the European Commission to apply relevant measures if the Competition Board believes that cartels organised in the EU adversely affect competition in Turkey. The provision grants reciprocal rights and obligations to the parties (the EU and Turkey), and therefore the European Commission has the authority to request that the Competition Board apply relevant measures to restore competition in the relevant markets.

There are also a number of bilateral co-operation agreements between the Turkish Competition Authority and the competition agencies in South Korea, Bulgaria, the Russian Federation, Egypt, Ukraine, Serbia, Albania and the EU, among others. These cooperation agreements are signed and implemented for various purposes, such as:

- Enhancing cooperation in applying competition law rules to increase the efficiency of product and service markets.
- Exchanging documents and information on certain topics between authorities.
- Improving cooperation and facilitating the exchange of information between the authorities with respect to competition law enforcement and policy.

The Turkish Competition Authority also faces various issues where international co-operation is required. In this respect, there have been various decisions in which the Competition Authority has requested co-operation on dawn raids, information exchange, notifications and collection of monetary fines from the competition authorities in other jurisdictions via the Ministry of Foreign affairs and the Ministry of Justice. The Competition Authority has, however, been unsuccessful in these requests.

The research department of the Competition Authority makes periodic consultations with relevant domestic and foreign institutions and organisations about the protection of competition to assess their results, and submits its recommendations to the Competition Board. A co-operation protocol was signed on 14 October 2009 between the Competition Authority and the Turkish Public Procurement Authority to procure a healthy competition environment with regard to public tenders by co-operating and sharing information.

However, the interplay between jurisdictions does not materially affect the handling of the Competition Board in cartel investigations. The principle of comity is not an explicit provision of the Turkish Competition Law. A cartel conduct that was investigated elsewhere in the world can be prosecuted in Turkey if it has had an effect on non-Turkish markets.

## Whistleblowers

18. Are there any whistleblower tools for individuals to report competition violations/cartels?

### Whistleblower tools

Not applicable.

### Whistleblower protection

Not applicable.

19. Is there a reward for individuals who report competition violations/cartels?

Not applicable.

## Proposals for reform

20. Are there any proposals for reform?

After various revisions and failed attempts over several years, a proposal to revise the Competition Law was finally approved by the Grand National Assembly of Turkey. On 16 June 2020, the amendments passed through the Turkish parliament and entered into force on 24 June 2020 (*Official Gazette dated 24 June 2020 No. 31165*) (Competition Amendment Law).

The most prominent changes introduced by the Competition Amendment Law were the:

- Introduction of a formal *de minimis* principle.
- Adoption of a significant impediment of effective competition (SIEC) test for merger control.
- Introduction of behavioural and structural remedies for anti-competitive conduct.
- Introduction of the settlement (*see below*) and commitment mechanisms.
- Expansion of the Competition Board's powers during on-site inspections.
- Clarification of the "self-assessment" principle when undertakings make a self-assessment of the compatibility of their agreements, concerted practices and/or decisions with Article 4 of the Competition Law, and the authorisation of the courts to grant individual exemptions along with the Competition Board.

The Competition Amendment Law does not have a material impact on the applicable rules governing leniency. However, the introduction of the settlement mechanism may be relevant to the leniency regime, as it offers an alternative for undertakings willing to admit wrong-doing and obtain a reduction in the fines that would otherwise be imposed. Most importantly, unlike the Leniency Regulation, the settlement procedure envisaged in the Competition Law will apply to all forms of violation and will not just be confined to cartels. Furthermore, unlike with leniency applications, undertakings would not be required to submit additional evidence regarding the infringement to be able to reach a settlement.

The settlement mechanism will enable the Competition Board, either of its own motion or upon the parties' request, to initiate the settlement procedure. Settlement can only be requested or offered following the initiation of a full-fledged investigation. In this respect, parties admitting infringement have until official service of the investigation report to apply for settlement. The Competition Board will set a deadline for the submission of the settlement letter and if settled, the investigation will be closed with a final decision (including the finding of a violation and applicable administrative monetary fine). If the investigation ends in a settlement, the Competition Board can reduce the administrative monetary fine by up to 25%.

Other procedures and principles regarding settlement will be determined by the Competition Board's secondary legislation.

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**Professional qualifications.** Istanbul, Turkey, 1998; New York, US, 2002; Brussels, Belgium 2003; England and Wales, 2004 (non-practising)

**Areas of practice.** Regulatory and compliance; competition law; white collar irregularities; internet law; general corporate/contracts; litigation.

### Recent transactions

- Represented Sahibinden Bilgi Teknolojileri Paz ve Tic AŞ (Sahibinden) in an investigation conducted by the Turkish Competition Authority in order to determine whether Sahibinden has violated Article 6 of the Competition Law by excessive pricing conducts in the markets for online platform services towards vehicle and estate sale/rental services.
- Merger control filing with the Competition Board for the merger of Luxottica Group SpA and Essilor International (Compagnie Générale d'Optique) SA.
- Merger control filing with the Competition Board for the acquisition of sole control of Time Warner Inc by AT&T Inc.

**Languages.** English

**Professional associations/memberships.** Istanbul Bar Association (since 1998); New York Bar Association (since 2002); American Bar Association (since 2002); Law Society of England and Wales (since 2004); Brussels Bar Association (since 2003).

### Publications

- *"Testing Justification for Segment Based Relevant Product Market Definition in Merger Control: Evidence From Turkey"*, by Gönenç Gürkaynak, Esq. and Dr. Ekrem Kalkan, *Journal of Competition Law and Economics*, Oxford University Press, June 2017.
- *"Shady Contours of Cartel Liability of Service Providers"*, by Gönenç Gürkaynak, Esq., Ceren Özkanlı, Su Şimşek and Nazlı Ceylan Mollaoğlu, *IBA Competition Law International*, Volume 13, No. 1, April 2017.
- *"Multisided markets and the challenge of incorporating multisided considerations into competition law analysis"* (Article by Gönenç Gürkaynak, Esq., Öznur İnanılır, Sinan Diniz and Ayşe Gizem Yaşar), doi: 10.1093/jaenfo/jnw007, *Journal of Antitrust Enforcement*, Oxford University Press, June 30, 2016.
- *"Call for unified anti-corruption law and competition law compliance programme: Why compliance programmes should be viewed as a mitigating factor"*, (Article by Gönenç Gürkaynak, Esq., C# Olgu Kama, Ceren Özkanlı and Burcu Ergüven), *Journal of Business Compliance* 01/02 2016 – Special Issue.
- *"Most-favored-nation Clauses in Commercial Contracts: Legal and Economic Analysis and Proposal For a Guideline"*, by Gönenç Gürkaynak, Esq., Ayşe Güner, Esq., Sinan Diniz and Janelle Filson, Esq., *European Journal of Law and Economics*, October 27, 2015.



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**Languages.** English

**Professional associations/memberships.** Ankara Bar Association (since 2014).

### **Publications**

- *"An Evaluation Concerning yhe New Ex-Ante Regulations For the Prevention of Margin Squeeze in the Electronic Communication Markets in Turkey", The Competition Journal, No. 16(2), The Turkish Competition Authority Press, Ankara, p. 3 – 42, April 2015.*
- *"Assessment of Net Neutrality Regulations and Traffic Management Activities in Mobile Communications From the Perspective of Competition Law", The Competition Journal, No. 16(3), The Turkish Competition Authority Press, Ankara, p. 3 – 42, July 2015.*
- *"Jurisdictional Conflicts between the Telecommunications Authority and the Competition Authority in light of the Relevant Legislation and the Case Law", 4th Symposium on Competition Law Related Board and Court Decisions, The Research Institute of Banking and Commercial Law, 2015.*

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